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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/998,603	11/16/2001	Howard A. Hardee	29002-11270	4747

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LEYDIG, VOIT & MAYER, LTD.  
(SEATTLE OFFICE)  
TWO PRUDENTIAL PLAZA  
SUITE 4900  
CHICAGO, IL 60601-6780

EXAMINER

WILKENS, JANET MARIE

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/998,603	<b>Applicant(s)</b> HARDEE ET AL.	
	<b>Examiner</b> Janet M. Wilkens	<b>Art Unit</b> 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 22-27 is/are rejected.
- 7) ☒ Claim(s) 20 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

12

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Black. Black teaches a sheet (33) formed using a piece of fabric having corners constructed with two pieces of material (34,36) stitched together (Fig. 10) and stitched to form the respective corner (see Fig. 6). Whenever desired, the larger piece of material (34) could be turned inside out, reversing the exterior/interior status of the pieces of material. Furthermore, both pieces of material have notches (see Fig. 10).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kubacki in view of Collins, III. Kubacki teaches a tent (Fig. 1) having a substantially waterproof tub floor (17), the floor having four corners. The tent also includes tent walls (22,23) attached to the floor. For claim 22, Kubacki fails to teach exactly how the corners are formed. Collins teaches a fabric structure with corners (see

Figs. 3,4), each are formed by attaching portions of adjacent sidewalls together via stitching and then turning the fabric inside out so that the seams are hidden from view (column 2, lines 29-39). It would have been obvious to one of ordinary skill in the art at the time of the invention to construct the floor corners of Kubacki in this manner, since this type of corner construction is well known in the art, as shown by Collins, and the corners of Kubacki obviously need to be formed in some manner, the manner disclosed by Collins satisfying this need and providing the advantage of inside (and not noticeable) stitching lines.

Claims 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kubacki in view of Collins, III as applied to claims 22 and 23 above, and further in view of Dehner. As stated above, Kubacki in view of Collins teaches the limitations of claims 22 and 23, including a tent floor with corners. For claims 24-27, Kubacki in view of Collins fails to teach a waterproof sealing tape attached to the interior portions of the corners. Dehner teaches the use of waterproof sealing tape (66) for covering a seam (see Fig. 2) to prevent unwanted water penetration there through and to provide added strength there at. The tape is heat bonded/welded to the seam (see column 4, lines 11-18). It would have been obvious to one of ordinary skill in the art at the time of the invention to add waterproof sealing tape to the seams of Kubacki in view of Collins, such as is taught by Dehner, to prevent water from entering the sheet through those points and to strengthen to the sheet at the seams.

For claim 25, although Kubacki in view of Collins fails to teach what type of fabric the waterproof floor is made of and the tape of Dehner is disclosed to be nylon,

plastic/other types of plastic, including polyethylene, for the use in waterproof structures is well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to make the floor and tape out of polyethylene, depending on the desired need of the person constructing the tent, e.g. depending on the materials readily available, economic reasons, personal preferences, etc.

Claims 7-12 and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Black in view of Dehner. Black teaches the limitations of claims 1-5, including first and second sheets forming three-dimensional corners. For claims 7-12 and 14-16, Black fails to teach a third sheet of material, i.e. waterproof sealing tape, attached to the interior portions of the corners. First, although Black teaches a fabric sheet, fitted plastic sheets are well known in the art for use as mattress covers to prevent liquid from ruining the mattress, to protect occupants from dust, articles in the mattress itself, etc. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use an alternate type of material for the sheet, i.e. using a plastic sheet instead of a fabric sheet, for the advantages stated above. Second, Dehner teaches the use of waterproof sealing tape (66) for covering a seam (see Fig. 2) to prevent unwanted water penetration there through and to provide added strength there at. It would have been obvious to one of ordinary skill in the art at the time of the invention to add waterproof sealing tape to the seams of Black, such as is taught by Dehner, to prevent water from entering the sheet through those points and to strengthen to the sheet at the seams.

For claim 17, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the sheet of Black in view of Dehner in combination with two chairs in order to form a child's tent for play purposes.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Black in view of Dehner as applied to claims 7-12 and 14-17 above, and further in view of Hammond. As stated above, Black in view of Dehner teaches the limitations of claims 1 and 11, including first, second and third sheets forming three-dimensional corners. For claim 13, Black in view of Dehner fails to teach that the first and third sheets are polyethylene. Hammond teaches the use of polyethylene sheets (column 5, lines 43-46); these sheets being attached via heat welding to attachment members. It would have been obvious to one of ordinary skill in the art at the time of the invention to use an alternate type of material for the first and third sheets, i.e. using polyethylene sheets, such as is taught by Hammond, instead of the sheets presently used, depending on the desired need of the person constructing the sheet, e.g. depending on the material readily available, properties of the sheets desired, etc.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Black. As stated above, Black teaches the limitations of claims 1 and 18, including a first sheet. For claim 19, Black fails to teach that the sheet forms a tent. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the sheet of Black in combination with two chairs in order to form a child's tent for play purposes.

***Allowable Subject Matter***

Claims 20 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed January 18, 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that Collins is nonanalogous art: it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both Collins and Kubacki teach structures made of fabric. Furthermore, Collins is only being used to show a teaching of constructing corners of a fabric structure. Each corner is formed by attaching portions of adjacent sidewalls together via stitching and then turning the fabric inside out so that the seams are hidden from view. Note: the tent limitations, including the base and sidewalls being found in Kubacki.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning: it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was

within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). As stated above, Collins merely teaches one known manner in which corners of a fabric structure can be made; this manner being applicable to the corners of the base of Kubacki.

In conclusion, as for the art rejections of claims 1-19 (previously stated as allowable): because of the manner in which claim 1 has been modified to overcome the 112 second paragraph rejections, the limitations remaining therein no longer define this claim (and most of its dependents) it over the reference of Black, as discussed above in detail.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of



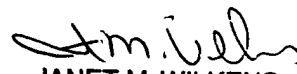
the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet M. Wilkens whose telephone number is (571) 272-6869. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Wilkens  
April 13, 2005

  
JANET M. WILKENS  
PRIMARY EXAMINER  
Art 3637